

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 6867 of 2018

Hardyal Singh and another

....Petitioners

VS

Financial Commissioner Punjab and others

....Respondents

COCP No. 2366 of 2018

Baljinder Singh

....Petitioner

VS

Hardyal Singh and others

....Respondents

Date of Decision: 16.12.2021

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. J.S. Brar, Advocate for the petitioner (in CWP-6867-2018)
Mr. Sarju Puri, Advocate for the petitioner (in COCP-2366-2018)
Ms. Ambika Bedi, AAG Punjab
Mr. S.D. Sharma, Sr. Advocate with
Mr. Anupam Sharma, Advocate for respondent No. 3
Ms. Rajni Gandhi, Advocate for respondent No. 22
Mr. Hemraj Bhardwaj, Advocate
for respondents No. 1 and 2 (in COCP-2366-2018)
Mr. K.S. Rana, Advocate for respondent No. 3 (in COCP-2366-2018)

SUDHIR MITTAL, J.

This order will dispose of CWP No. 6867 of 2018 and COCP No. 2366 of 2018 as the contempt petition arises out of this writ petition.

CWP No. 6867 of 2018

Under challenge in this writ petition is the *sanad takseem* issued vide

order dated 14.08.2013 as well as order dated 07.02.2018 passed by the Financial Commissioner dismissing the revision against the said *sanad*.

2. The petitioners are sons of Avtar Singh and co-sharer in Khewat No. 46/46 Khatauni No. 91 to 98 measuring 84 Bigha 14 Biswa situate in the revenue estate of village Jolliya, Sub Tehsil Bhawanigarh, District Sangrur. Respondent No. 3 filed an application dated 19.06.2012 for partition of the joint khewat. Mode of partition was approved vide order dated 19.03.2013 and the partition was finalized vide order dated 14.08.2013 resulting in issuance of *sanad*. As mentioned hereinabove, challenge thereto by way of ROR 1007 of 2016 has failed.

3. Additional relevant facts which may be noticed are that Avtar Singh (father of the petitioners) had also challenged the *sanad* by way of revision petition dated 09.12.2013. This was dismissed vide order dated 01.08.2016 on the ground that he had no locus to challenge the *sanad* as he had already sold his share in the joint khewat. Uncle of the petitioners namely Baljinder Singh son of Kishan Singh had also challenged the *sanad* but his revision petition was dismissed as withdrawn vide order dated 29.08.2016 as there was a settlement between the parties. The revision petition of the petitioners was filed on 12.12.2016.

4. The petitioners have pleaded in this writ petition that upon service of notice they had appeared before the Assistant Collector IInd Grade but stopped appearing thereafter as the said official as well as counsel for respondent No. 3 had given an oral assurance that their interests would be protected and they need not worry about filing objections etc. Thus, the partition proceedings were carried out in the absence of the petitioners as they chose not to appear therein.

5. The arguments raised by learned counsel for the petitioners are that respondent No. 3 had filed another partition application dated 19.06.2012 in respect of Khewat No. 47/47 which was clubbed with the partition application out

partition of different Khewats was illegal. Further, a conjoint reading of Sections 121 and 122 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as 'the Act') shows that date with effect from which the partition is to take effect must be mentioned in the *sanad*. The same having not been done, a non curable defect existed on account of which the *sanad* deserved to be set aside. The partition is illegal also because it is contrary to the mode of partition which prescribed that possession of parties would be respected. The petitioners have been in possession of Kharsa Nos. 53 and 54 since a long time but they have been allotted Khasra Nos. 51 and 52 and on this ground also the partition is illegal. Finally, it has been submitted that impugned order dated 07.02.2018 passed by the Financial Commissioner deserves to be set aside on the short ground that it is non-speaking.

6. Learned senior counsel for respondent No. 3 has primarily submitted that the present litigation is malicious and motivated and does not deserve to be considered on merits. The father of the petitioners had sold his share in Khewat No. 46/46 to respondent No. 3 vide sale deed dated 18.06.2010. Yet, he challenged the impugned *sanad* before the Financial Commissioner. The aim of the challenge could only have been to delay transfer of possession as he had no right to challenge the partition of a Khewat in which he was no longer the co-sharer. Baljinder Singh son of Kishan Singh (uncle of the petitioners) also challenged the impugned *sanad* but ultimately settled with the answering respondent. The revision petition out of which this writ petition has arisen was filed four months after the dismissal of the revisions filed by father and uncle. Obviously, the intent was to delay transfer of possession and cause loss to the answering respondent. It has further been argued that the petitioners absented themselves from the partition proceedings by choice. No objections were filed against the nakshas drawn up after finalization of mode of partition nor any challenge was raised to the order clubbing the two separate partition applications. Thus, their conduct showed that they have waived their

rights to raise objections. Hence, they can not be permitted to challenge the *sanad* on the basis of objections which were not raised by them during the course of partition proceedings. The answering respondent has deposited a sum of Rs. 75,000/- as compensation for the standing wheat crop, as assessed by the Financial Commissioner. This amount was ordered to be kept in a Fixed Deposit vide order dated 11.05.2018 passed in this case. Vide the said order directions were also issued to the Naib Tehsildar concerned to supervise the harvesting of the standing crop and to sell the same. The sale proceeds were also to be deposited in this Court to be invested in a Fixed Deposit. A direction be accordingly issued that the sale proceeds be paid to the petitioners and the compensation deposited by the answering respondent be refunded.

7. In response to the arguments raised by learned senior counsel for respondent No. 3, counsel for the petitioners has argued that the submissions made on merits of the case have not been controverted in any manner and, thus, the writ petition deserves to succeed.

8. From the facts enumerated hereinabove it becomes evident that the petitioners stopped appearing before the Assistant Collector IInd Grade by choice. They did not take interest in the partition proceedings and did not object to the clubbing of the partition applications nor were any objections raised against the *nakshas*. Thus, they are estopped from raising objections to the *sanad*. Their conduct leaves no doubt that they had waived their rights to challenge the alleged illegalities committed by the Assistant Collector IInd Grade.

9. The facts also show that the litigation is malafide. The father did not need to challenge the *sanad* after he had sold his share. Yet, he did so and the intent could only have been to delay transfer of possession. The uncle challenged the *sanad* only to withdraw the same on reaching a settlement. Four months later

the petitioners filed a revision petition raising objections which were never raised

during the course of partition proceedings. It requires no great erudition to conclude that the litigation was initiated with the intention of extracting a pound of flesh.

10. In view of the above, the petitioners have disentitled themselves from consideration of the case on merits. The writ petition is, accordingly, dismissed.

11. As mentioned by learned senior counsel for respondent No. 3, a perusal of order dated 11.05.2018 passed in this case shows that directions were issued to the Naib Tehsildar of the concerned area to harvest the crop and deposit the sale proceeds in this Court for being invested in a Fixed Deposit Receipt. This order also shows that respondent No. 3 had deposited a sum of Rs. 75,000/- as compensation assessed by the Financial Commissioner and this amount was also ordered to be kept in a Fixed Deposit. Respondent No. 3 has alleged that possession has been taken whereas the case of the petitioners is that they are still in possession by virtue of order of status quo passed by this Court. Assuming that the petitioners are in possession they would be entitled to be compensated for the crop presently standing on the land in dispute. They are also entitled to the sale proceeds of the crop harvested pursuant to order dated 11.05.2018. Thus, the Registry is directed to release the amount of Fixed Deposit Receipts in favour of the petitioners alongwith interest accrued against proper receipt.

COCP No. 2366 of 2018

The contempt petition has been filed by respondent No. 3 on the ground that a mis-representation was made before this Court to obtain a status quo order on 20.04.2018. The possession was infact taken on 04.04.2018, after dismissal of the revision petition.

The writ petition has been dismissed and, therefore, I do not intend to go into the allegations made in this case.

Accordingly, the contempt petition is also dismissed.

A photocopy of this order be placed on the file of connected contempt petition.

16.12.2021
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(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No